COPY

Nos. 496, 520

In the Supreme Court of the United States

OCTOBER TERM, 1960

BANK OF THE PHILIPPINE ISLANDS, PLAZA CERVANTES, MANILA, PHILIPPINES, PETITIONER

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA AND SUCCESSOR TO THE PHILIPPINE ALIEN PROPERTY ADMINISTRATOR, AND IVY BAKER PRIEST, TREASURER OF THE UNITED STATES OF AMERICA

PHILIPPINE NATIONAL BANK, A PHILIPPINE CORPORATION HAVING ITS PRINCIPAL PLACE OF BUSINESS IN MANILA, PHILIPPINES, PETITIONER

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA, AND SUCCESSOR TO THE PHILIPPINE ALIEN PROPERTY ADMINISTRATOR, AND IVY BAKER PRIEST, TREASURER OF THE UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
DALLAS S. TOWNSEND,
Special Assistant to the Attorney General,
IRVING JAFFE,
Attorney,
Department of Justice, Washington 25, D.C.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statement	3
Argument	13
Conclusion	22

CITATIONS

Cases:

Aboitiz & Co. v. *Price*, 99 F. Supp. 602	20
Cabell v. *Clark*, 162 F. 2d 153	15
Central Union Trust Co. v. *Garvan*, 254 U.S. 554	17
Kahn v. *Garvan*, 263 Fed. 909	17
Orvis v. *Brownell*, 345 U.S. 183	15
Schilling v. *Rogers*, 363 U.S. 666	18
Societe Internationale, etc. v. *Rogers*, 357 U.S. 197	19
Stoehr v. *Wallace*, 255 U.S. 239	17
Third National Bank & Trust Co. v. *United States*, 53 F. 2d 599	19
Thirty Hogsheads of Sugar v. *Boyle*, 9 Cranch 191	20
United States v. *Chemical Foundation*, 272 U.S. 1	18

Statutes, Treaties, and Executive Orders:

Trading with the Enemy Act, 40 Stat. 411, as amended:	
Sec. 9(a)	4, 13, 15, 17, 18, 19
Sec. 32	13, 18
Sec. 34	15

Statutes, Treaties, and Executive Orders—Con.

Hague Convention Regulations, ratified by the Senate of the United States, 36 Stat. 2295:
Page
Art. 43 20
Art. 52 21
Art. 53 21
Japanese Executive Order 135, March 15, 1943 ..... 4, 22
Japanese Executive Order 136, March 15, 1943 ..... 4, 22
Sec. 2 5
Sec. 9 5

In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 496

BANK OF THE PHILIPPINE ISLANDS, PLAZA CERVANTES, MANILA, PHILIPPINES, PETITIONER

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA AND SUCCESSOR TO THE PHILIPPINE ALIEN PROPERTY ADMINISTRATOR, AND IVY BAKER PRIEST, TREASURER OF THE UNITED STATES OF AMERICA

No. 520

PHILIPPINE NATIONAL BANK, A PHILIPPINE CORPORATION HAVING ITS PRINCIPAL PLACE OF BUSINESS IN MANILA, PHILIPPINES, PETITIONER

v.

WILLIAM P. ROGERS, ATTORNEY GENERAL OF THE UNITED STATES OF AMERICA, AND SUCCESSOR TO THE PHILIPPINE ALIEN PROPERTY ADMINISTRATOR, AND IVY BAKER PRIEST, TREASURER OF THE UNITED STATES OF AMERICA

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (J.A. 308–328) is reported at 165 F. Supp. 100. The opinion of the

Court of Appeals (Appendix to Petition in No. 496, 15a–20a) is reported at 281 F. 2d 12.[1]

JURISDICTION

The judgment of the Court of Appeals was entered on November 5, 1959, and orders denying rehearing *en banc* were entered on January 11, 1960. The petition for certiorari in No. 496 was filed on October 20, 1960, and in No. 520 on November 7, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether, as the courts below found, petitioners failed to establish that certain vested funds were identifiable as owned by them, and, if so identified, (a) that petitioner Bank of the Philippine Islands (No. 496) failed to prove that the monies as to which it claimed ownership became commingled with other funds, a part of which was vested; and (b) that petitioner Philippine National Bank (No. 520) failed to show that it was the beneficial owner of the property that was vested.

2. Whether the courts below properly excluded from evidence in a trial *de novo* under Section 9(a) of the Trading with the Enemy Act (a) the findings contained in a decision rendered in an administrative hearing; and (b) a descriptive recital in the vesting order, not necessary under the statute to effect a valid seizure, when such recital was offered for the truth of the matter recited.

---

[1] The Joint Appendix in the Court of Appeals is designated herein as "J.A."

3. Whether under international and United States law it was proper for the Japanese as belligerent occupants of the Philippine Islands to require (a) petitioner Bank of the Philippine Islands to exchange its Philippine currency for Japanese military currency, both of which currencies were declared to be and circulated as legal tender; and (b) petitioner Philippine National Bank to surrender its money either as a "requisition", "forced loan", "contribution", or as government property.

STATEMENT[2]

I

By Vesting Order No. P–285 dated August 5, 1947, ₱662,387 in pre-war Philippine Treasury Certificates

[2] Petitioner Bank of the Philippine Islands (No. 496) supports various assertions in its statement of the case by reference to documents printed in the Joint Appendix which were offered but were not admitted into evidence (see J.A. 21–25, 191–195; J.A. 51, 241; see petitioner's references to these pages on pages 6, 7, 8, and 9 of petition); by reference to those portions of documents for which admission to evidence was denied (J.A. 21–25, 189; 196–203; see petitioner's references to these pages on pages 6, 7, 8, 9, 10, 11, 12, 13, and 14 of petition); by reference to statements of counsel which are not evidence (see J.A. 21–25, 129, and petitioner's references to these pages on page 9 of petition). Petitioner also cites, as facts, statements in the District Court's opinion which merely summarize the petitioner's contentions (see J.A. 311–313; see petitioner's references to these pages on pages 6, 7, 8, 9, and 10 of petition). On pages 8, 9, and 10 of petition the District Court opinion (J.A. 312–313) is cited in support of the assertion that petitioner turned over funds to a Japanese financial agency (Nampo) by force and that these funds were commingled by Nampo with other funds; the District Court actually rejected these contentions, holding that there was no force or duress in fact or in law (J.A. 321) and that petitioner had not established a commingling (J.A. 322).

and ₱289,000 in Philippine National Bank notes were vested as Japanese property (J.A. 189). The petitioners (hereinafter sometimes referred to as BPI and PNB, respectively) brought separate suits under Section 9(a) of the Trading with the Enemy Act, which were later consolidated for trial (J.A. 6–8, 10–13, 15).

The petitioner in No. 496 (BPI) seeks to recover ₱638,000 in Philippine Treasury Certificates of the vested currency, contending that immediately prior to seizure it had a lien thereon to that extent. The petitioner in No. 520 (PNB) seeks the entire amount vested, claiming it was the owner thereof immediately prior to vesting.

The background facts are these. Prior to the Japanese occupation of the Philippines, "emergency" currency was issued by the Philippine Commonwealth Government because of a shortage of currency in certain of the Islands. Soon after the occupation, the Japanese banned the circulation of the "emergency" currency and proclaimed the Japanese military pesos and the regular prewar Philippine peso as legal tender (J.A. 64–65).

In 1943 the Japanese decided to redeem the "emergency" currency by exchanging it for prewar Philippine currency consisting of PNB notes and Philippine Treasury Certificates. Executive Orders 135 and 136, issued on March 15, 1943, by the head of the Japanese puppet government (sometimes referred to as the Central Administrative Organization and sometimes as the Philippine Executive Commission), provided for the registration and redemption of the

"emergency" currency (J.A. 220–231). By Section 9 of Executive Order 136 an "Emergency Notes Reserve Fund" was created out of available funds in the national treasury to be used exclusively for the redemption of "emergency" notes (J.A. 229–230). By Section 2, the branches of PNB were designated to act as redemption agents in those areas where it maintained branches. In other areas local treasurers were designated to act as redemption agents (J.A. 226–227).

On or about March 9, 1943, a few days prior to the issuance of the above Executive Orders, large batches of currency, principally prewar Philippine pesos, were shipped from Manila by Nampo Kaihatsu Kinko[1] to outlying branches of PNB at Bacolod, Iloilo, and Cebu (all in the Vasayas) and to Davao (on Mindanao). Bacolod was sent ₱2,021,200; Iloilo ₱2,021,200; Cebu ₱1,300,000; Davao ₱300,000 (J.A. 256, 258, 260, 261). The record does not show how much currency, if any, was shipped to other branches of PNB or what currency, if any, was shipped to those areas in which PNB had no branches.

The sum sent to the Bacolod Branch of PNB was received by it on March 12, 1943 (J.A. 296 297). On that day the Bacolod Branch opened an account on its books entitled "Cash on hand—ENRF" (Emergency Notes Redemption Fund) and posted the sum of ₱2,021,200 as the opening balance (J.A. 93 94, 271).

---

[1] Also known as Southern Regions Development Bank and hereinafter referred to as "Nampo." Nampo was a financial agency of the Japanese established in Manila in mid-1942 whose functions, among other things, were to disburse payments for the Army and issue Japanese military notes (J.A. 38, 65).

Two years later, on March 2, 1945, there were ₱917,749 in this account in the Bacolod Branch of PNB. This sum, together with ₱172,292 in its operating fund account, or a total of ₱1,090,041 in prewar Philippine currency, was turned over to the Bacolod Branch of the Bank of Taiwan pursuant to an order of the Japanese High Command (J.A. 212–213).[4]

The Japanese forces left Bacolod in the latter part of March 1945 (J.A. 183). Units of the American Army later found ₱952,000 in Philippine currency in the battlefield at Patag (J.A. 170). It was this currency which was later vested (J.A. 189).

The petitioner BPI claims to be the beneficial owner of ₱638,000 out of the sum vested and that it has a lien thereon to that extent. The facts relating to this petitioner's claim are as follows. On December 20, 1941, just prior to the fall of Manila, the American High Commissioner for the Philippines ordered all banks to deliver to him their Philippine currencies. The petitioner turned over all its currency except for an amount in excess of ₱600,000 which it retained to meet end-of-the-month expenses and a yearly dividend. Because of wartime conditions the petitioner was unable to reopen to make the anticipated disbursements, and the said ₱600,000 remained in its vaults when it reopened for business under the Japanese occupation (J.A. 57–58).

On February 26, 1943, Nampo ordered BPI to deposit to its account with Nampo or to exchange

[4] The Bank of Taiwan was a Japanese bank which had been established in the Philippine Islands long before the Japanese occupation (J.A. 52).

for Japanese military notes all Philippine money in its vaults up to and including ₱20 notes (J.A. 38, 232). Before complying with this order BPI sought and received confirmation from the Japanese military authorities that compliance was required (J.A. 40–41, 233–234). BPI then complied (J.A. 42–43). Between March 2 and March 9, 1943, the petitioner BPI delivered to Nampo approximately ₱643,000 in Philippine money, of which ₱638,000 were in treasury certificates and ₱5,000 in coin (J.A. 45–48, 55, 235). Of the certificates, ₱162,000 were in ₱20 denominations (J.A. 235, 237). In return BPI received ₱643,000 in Japanese military currency which was legal tender at that time circulating at par, and BPI's cash position remained unchanged after the exchange according to its books (J.A. 57, 60–61). When making arrangements for the delivery of the Philippine currency in exchange for the Japanese military notes the BPI witness testified that the submanager of Nampo had stated to him that Nampo intended to send to Bacolod for use in the redemption program the Philippine currency which BPI was to deliver to Nampo (J.A. 44).[1] The ₱2,021,200 sent by Nampo

[1] BPI's witness testified that the Japanese military notes received in exchange were segregated in its vaults and were not used (J.A. 48, 55–56). The witness admitted, however, that the military pesos were legal tender and could have been used (J.A. 57, 61). Indeed, BPI had been taking in and paying out military pesos (J.A. 54) and, at the beginning of March 1943, this petitioner had more than 2,500,000 military pesos in cash on hand over and above the 643,000 military pesos it had received from Nampo (J.A. 59–60).

[2] This testimony was admitted solely to show the then state of mind of Nampo's submanager (J.A. 44).

to the Bacolod Branch of PNB on March 9, 1943, contained no currency of ₱20 denominations (J.A. 105, 107, 166, 296, 297). It will be recalled, however, that ₱162,000 of the money delivered by BPI to Nampo were in ₱20 denominations (J.A. 235, 237).

The petitioner PNB claims that it was the beneficial owner of the money sent by Nampo in March 1943 to PNB's Bacolod Branch, and that it is, therefore, entitled to recover all the money that was vested. The record shows that when the American High Commissioner directed all banks in Manila to surrender their Philippine currency, PNB complied, (J.A. 63). The chief accountant for PNB testified that he did not know what the source was of treasury certificates or other Philippine currency with which PNB reopened for business on February 3, 1942, under the Japanese occupation (J.A. 139). Until Nampo opened in mid-1942, PNB acted as the clearing house of banks then operating under the Japanese occupation (J.A. 65). PNB was also designated as a depository of the Philippine Executive Commission (sometimes known as the Central Administrative Organization), the Japanese puppet government in the Philippines (J.A. 137). In accordance with the Japanese military directive of February 26, 1943, PNB deposited approximately ₱4,143,000 to its account with Nampo on March 4 and 5, 1943. Of this sum approximately ₱2,569,000 consisted of treasury certificates or PNB notes. At the close of business on March 5, 1943, PNB had on deposit in its account with Nampo something over ₱6,000,000, of which approximately ₱3,700,000 consisted of Philippine treas-

ury certificates and PNB notes (J.A. 70–72). On March 9, 1943, when Nampo shipped ₱4,042,400, one-half to the Bacolod Branch of PNB and the other half to the Iloilo Branch of PNB, the PNB records show that it credited its "Due from Nampo" account in the amount of ₱4,042,400 (J.A. 249). PNB records further show that on the same day half of this amount was debited to its "Due from Bacolod Branch" account and half to its "Due from Iloilo Branch" account. These entries were made "pending arrangement with Central Administrative Organization for whose account the cash was sent" (J.A. 211). On March 11, 1943, these branch accounts show a credit in the identical amounts as the debit of March 9 with the following comment:

> To reverse entry March 9 Re Cash Rem. to you through Nampo * * * in as much as above amt. was shippsd for acc. of Central Administrative Organization. [J.A. 73–74, 211, 256, 258.]

On March 11, 1943, PNB's "Accounts Receivable" account shows a debit in the amount of ₱4,042,400 due from the Central Administrative Organization (J.A. 76, 252).

On March 12, 1943, the Bacolod Branch of PNB acknowledged receipt from Nampo of ₱2,021,200 and on the same day it established a cash on hand account designated ENRF (Emergency Note Redemption Fund), to which was debited ₱2,021,200 (J.A. 271). On April 1, corresponding credit was entered on the books of the Bacolod Branch in its "Due to Manila Office" account with the notation that it represented

the amount received from Nampo for the redemption program on March 12, 1943 (J.A. 279). A few days later, however, on April 6, 1943, the April 1 credit entry was reversed for credit to the Central Administrative Organization (J.A. 279), and on the same day (April 6, 1943) an account was established entitled "Central Administrative Organization" to which the sum of ₱2,021,200 was credited (J.A. 277).

The PNB books of the Manila office show that an "Emergency Notes Redemption Fund (CAO)" account was set up on October 11, 1943, and credited with ₱5,642,400 (J.A. 254). Debit entries in the PNB Manila books offsetting the foregoing credit were made to the accounts of the Bacolod, Iloilo, Cebu, and Davao branches in the amounts, respectively, of ₱2,021,200, ₱2,021,200, ₱1,300,000 and ₱300,000 (J.A. 257, 259–261).

On March 1, 1945, the manager of the Bank of Taiwan Branch in Bacolod delivered a letter to the acting manager of the Bacolod Branch of PNB directing him to turn over to the Bank of Taiwan all of its Philippine notes (J.A. 166–167, 212). After obtaining confirmation in writing from the Japanese High Command in Bacolod that the Bank of Taiwan letter was by order of the Japanese Imperial Forces, the acting manager of the PNB branch at Bacolod turned over to the Bank of Taiwan ₱1,090,041, of which ₱917,749 was the balance of the Emergency Notes Redemption Fund (J.A. 166–167, 213). The acting manager of the Bacolod Branch of PNB testified that, pursuant to arrangements made by him with the manager of the Bank of

Taiwan branch in Bacolod, he established an account called "Due from Taiwan Bank—Special Account" in which he entered the sum of P1,090,041 (J.A. 173-174). The acting manager of the Bacolod Branch further testified that he did not intend to have returned to him the same money that he had turned over to the Bank of Taiwan, but that he regarded the Bank of Taiwan as his debtor to the extent of the amount turned over and expected to receive a sum of money at some later date equivalent to what had been turned over (J.A. 174-176). The acting manager of the Bacolod Branch of PNB testified that he had been informed by the manager of the Bank of Taiwan branch at Bacolod that when the Japanese moved out to the mountains they would use good Philippine treasury notes in order to buy foodstuffs and supplies from the Filipinos (J.A. 186).

Approximately one month after the Bank of Taiwan received P1,090,041 from the Bacolod Branch of PNB, American Army units found approximately P952,000 in Philippine currency at Patag (J.A. 170, 173, 189). It is this fund, or what was left of it, which was seized.

II

The District Court found that the petitioners had not shown by a preponderance of the evidence that the money vested was the same money which the Bacolod Branch of PNB had turned over in March 1945 to the Bank of Taiwan (J.A. 323, 324, 327, 328). The trial court found that the credibility of the witness who attempted to establish the identity of the funds had been seriously impaired (J.A. 324).

As to the petitioner BPI, the District Court found that, assuming the commingling of the funds it turned over to Nampo in 1943, it had not shown by a preponderance of the evidence that the taking of the money pursuant to an order of the Japanese military command was unlawful or that it had been so turned over by force or duress. The District Court affirmatively found that the surrender by BPI of Philippine pesos in exchange for Japanese military pesos of equal value was valid under international law and was not, in fact or in law, made under force or duress (J.A. 320–322). The court concluded that BPI had no lien on the vested fund since it had not established either a commingling or an unlawful taking (J.A. 322–323).

As to the petitioner PNB, the District Court also found that it had not shown by a preponderance of the evidence that it was the beneficial owner of the money which its branch had turned over to the Bank of Taiwan (J.A. 324–326). Apart from its lack of beneficial ownership in the funds turned over by its Bacolod Branch to the Bank of Taiwan, the District Court found that the taking of the money in March 1945 by the Bank of Taiwan from the Bacolod Branch of PNB to purchase foodstuffs and supplies from the Filipinos was sanctioned by international law (J.A. 326–327). The court refused to find that PNB was an agency of the Philippine Government notwithstanding that more than 99% of its stock was owned by the Government (J.A. 112, 326).

The Court of Appeals affirmed, finding that the petitioners had not sustained their burden of proof

with respect to the identity of the currency and that the trial court had correctly so held (R. 347, BPI Petition, App. B, p. 18a). The court upheld the District Court's refusal to admit the vesting order in evidence for the purpose of establishing as fact the recital contained therein that the vested currency was the balance of the money deposited by Nampo with the Bacolod Branch of PNB which was captured by the American forces. Since the source of the money was not essential to the validity of the vesting order, which had not been challenged, the court held that no presumption of correctness attaches thereto or estops the Government in a *de novo* suit under Section 9(a) to judicially determine the ownership of the funds (R. 348–349, BPI Petition, App. B, pp. 19a–20a). The court also sustained the refusal to admit the administrative findings made in the claim proceeding under Section 32 of the Trading with the Enemy Act. While these findings tended to support the petitioners on the issue of the identity of the currency, the court held that they were merely administrative conclusions based on evidence then available which are not entitled to probative effect in a suit *de novo* dealing with the same questions (R. 349, BPI Petition, App. B, p. 20a). The court found it unnecessary, therefore, to reach the issues of law raised by the petitioners (R. 349, BPI Petition, App. B, p. 20a).

ARGUMENT

1. The sufficiency of the evidence to support the factual findings made by the courts below obviously presents no question warranting review.

The trial court properly found that in order for either petitioner to prevail it was required to show the identity of the currency which was vested, with the currency or a part of the currency which had been turned over by PNB's Bacolod Branch to the Bank of Taiwan. The only direct evidence offered on this point was testimony by the witness Buenaventura, the acting manager of the Bacolod Branch of PNB. While his testimony was by no means conclusive, it did, as the trial court pointed out, suggest such identity (J.A. 323). The trial court found, however (J.A. 324), that his credibility had been seriously impaired. Moreover, other testimony by this same witness supported with equal consistency the conclusion that the money which had been vested may have constituted funds of the Bank of Taiwan or other banks operating in the area (J.A. 324).

There is little in the record to support the contention of the petitioner BPI that the money which it turned over to Nampo in March 1943 became part of a commingled fund which had been transmitted by Nampo to the Bacolod Branch of PNB. BPI established that of the 638,000 Philippine pesos that it had delivered to Nampo, ₱162,000 were in ₱20 denominations (BPI Ex. 16, J.A. 48, 54, 235). Yet the record also established that of the ₱2,021,200 which had been sent to Nampo to the Bacolod Branch there was not a single ₱20 note (PNB Ex. 6, J.A. 105, 296). The trial court properly found, therefore, that the petitioner BPI had not established that the vested property was part of the fund that was transferred by BPI to Nampo in March 1943 (J.A. 322).

In addition to the issue of identity, each of the petitioners was required to show some beneficial right, title, and interest in the vested fund immediately prior to vesting in order to prevail. If either merely demonstrated that a debtor-creditor relationship existed between it or Nampo or the Japanese government or the Japanese puppet government or the Bank of Taiwan, it could not maintain suit under Section 9(a) of the Trading with the Enemy Act because the exclusive remedy for the recovery of a debt is that provided by Section 34 of the Trading with the Enemy Act and not a suit under Section 9(a) of that Act. *Cabell* v. *Clark*, 162 F. 2d 153 (C.A. 2). See also *Orvis* v. *Brownell*, 345 U.S. 183.

The petitioner BPI attempted to show its prevesting right, title, or interest by asserting a lien based upon its contention that the taking by Nampo in March 1943 was unlawful, that the funds taken were commingled with other funds by Nampo, and the property vested constituted part of that commingled fund. The trial court held that the taking was not unlawful,[1] that BPI had received value for the exchange of currency, that it had not established a commingling and, accordingly, had not established that it had any lien on the fund which had been vested (J.A. 321–323).

The petitioner PNB sought to establish that it was the prevesting beneficial owner of the vested funds. It contended that all the funds sent by Nampo to the various branches of PNB, including the one at Bacolod, for use in the redemption program, for which

[1] Discussed, *infra*, pp. 19–21.

PNB had been designated agent of the Japanese puppet government, were its own funds and that the Japanese puppet government had merely undertaken to reimburse PNB for the funds that had been used in the program, whereas the vested property constituted the balance of the funds not so used. PNB's bookkeeping entries, however, belie this contention. From the very inception of the redemption program PNB's books, both at its Manila office and at its Bacolod Branch, contained entries showing that the entire initial sum devoted to the redemption program was held for the account of the Central Administrative Organization (the Japanese puppet government) (J.A. 73, 76, 211, 249, 252, 254, 256–261, 271, 277, 279). Moreover, PNB was unable to show the initial source of Philippine treasury certificates when admittedly, upon its reopening under the Japanese occupation, its vaults contained no such currency. PNB could not explain the identical offsetting entries shortly after it resumed operations under the Japanese military occupation of approximately ₱5,900,000 between the Yokohama Specie Bank (a Japanese bank) and the Central Administrative Organization (J.A. 138–143). The record also shows that at the time that the Bacolod Branch of PNB turned over to the Bank of Taiwan in 1945, pursuant to a Japanese military order, over a million Philippine pesos, including the unspent balance of its redemption fund account, the acting manager of the Bacolod Branch by arrangement with the manager of the Bank of Taiwan established in the Bacolod Branch books a Bank of Taiwan special account into which was entered the amount turned over

(J.A. 173–174), and thereby made the Bank of Taiwan PNB's debtor (J.A. 174–176). The trial court quite correctly found that the petitioner PNB had not established its beneficial ownership in the vested funds (J.A. 324–326).

2. The petitioner BPI also contended that it was error for the trial court to deny admission to the vesting order offered as BPI Exhibit 1 for the truth of the descriptive recital therein contained that the vested property represented the balance of the money deposited by Nampo with the Philippine National Bank, Bacolod Branch, which was captured by the American forces late in March 1945 (J.A. 17–18, 189). Petitioner misunderstands the theory and purpose of the Trading with the Enemy Act. Enemy property is required to be reduced to possession summarily based upon an *ex parte* investigation, and the Custodian need only be motivated by his supposition or belief that the property is enemy owned. *Stoehr* v. *Wallace*, 255 U.S. 239, 245; *Central Union Trust Co.* v. *Garvan*, 254 U.S. 554, 566, 568. It is contemplated that the Custodian may make mistakes, and all questions arising from his mistakes must be treated in a suit under Section 9 of the Act. *Kahn* v. *Garvan*, 263 Fed. 909, 916 (S.D.N.Y.). The *de novo* suit under Section 9 of the Act is to be unembarrassed by the precedent executive determination, that is, by the findings in the vesting order. *Stoehr* v. *Wallace*, *supra*, at page 246. And, as the Court of Appeals below pointed out, it was only necessary that the Custodian find that the property was enemy owned. The source of the property, who captured it, where it was found, were all

unessential to the validity of the vesting order. But, since the validity of the vesting order itself has not been challenged, BPI's reliance on cases such as *United States* v. *Chemical Foundation*, 272 U.S. 1, and other cases cited in its petition, is misplaced.

The petitioner BPI also complains that the trial court erred in refusing to admit into evidence the decision of the Director of the Office of Alien Property rendered after an administrative claim proceeding under Section 32 of the Trading with the Enemy Act (BPI Ex. 2a, J.A. 18–25, 196). The trial court correctly excluded BPI Ex. 2a to the extent that it was offered as proof of any facts contained therein. The decision of the Director represents merely his opinion based upon his evaluation of the evidence before him on issues which, in a *de novo* proceeding, it became the function of the trial court itself to resolve. Furthermore, the rules of evidence which prevail in courts do not bind an administrative tribunal. The petitioner BPI confuses a trial *de novo* with judicial proceedings in which an administrative finding or decision is being reviewed. The administrative decision here involved was rendered in a proceeding under Section 32 of the Act. Those decisions are not subject to judicial review. See *Schilling* v. *Rogers*, 363 U.S. 666. Since the Section 9(a) suits which the petitioners instituted are *de novo* suits, they had ample opportunity to present to the new trier of the facts, the trial court below, all of the evidence which might be probative of the issues, whether or not it had been introduced in the administrative proceeding. The Director's conclusions or opinions on such evi-

dence, however, are not admissible. See *Third National Bank & Trust Co.* v. *United States*, 53 F. 2d 599, at 602–603 (C.A. 6). All the cases cited by BPI in its petition are wholly inapposite. This is particularly true of its reliance on *Societe Internationale, etc.* v. *Rogers*, 357 U.S. 197, in support of the contention that the lower courts had denied to it an opportunity to present its evidence and obtain a hearing under the Trading with the Enemy Act. Here, the petitioner BPI was given a full hearing and full opportunity to present its proper evidence. The trial was a full one on the merits. In the *Societe Internationale* case, *supra*, the complaint had been dismissed on motion for failure to comply with an order of production; no trial on the merits had ever been had and, if the dismissal was upheld, none would be forthcoming.

3. Contrary to petitioner's contention, the exchange of currencies between BPI and Nampo in 1943 and the taking of Philippine currency from PNB in 1945 by the Bank of Taiwan were sanctioned by the law of the United States and by international law. The Court of Appeals found no need to reach this issue, because facts independently essential to the recovery of the vested property by petitioners under Section 9(a) have not been established. Nevertheless, petitioners are not supported either by international law or by the law of the United States in their contentions that the surrender by them of Philippine currency in 1943 and 1945, respectively, was unlawfully demanded.

(a) The transaction between BPI and Nampo in 1943 was a legal transaction. The law of the United

States includes the law of nations or the law of war. See *Thirty Hogsheads of Sugar* v. *Boyle*, 9 Cranch 191, 197–198. The particular principles of war here applicable are set forth in the Hague Convention and the regulations contained therein, ratified by the Senate of the United States, 36 Stat. 2295, 2306.[8] American courts have decided, under the Hague Regulations (Article 43), that an occupying power may regulate the currency and may make the money it issues legal tender.[9] *Aboitiz & Co.* v. *Price*, 99 F. Supp. 602 (D. Utah), at 613–615.

BPI, overlooking the fact that it received in exchange for Philippine currency Japanese military pesos of equal value and circulating as legal tender on a par with Philippine currency at the time of the transfer, asserts that the courts below erred because their decisions are in conflict with inter-allied declarations and restitution program directives issued by the allied powers in Japan. The inter-allied declarations and the restitution program were intended to apply to unlawful transfers. They were not intended to and do not supersede the law of the United States as represented by the Hague Convention. As the trial court found (J.A. 320–321), the transfer of Philippine currency by BPI was required by the Japanese for the purpose of regulating the currency

[8] See PNB petition, Appendix A, pp. 1a–3a.

[9] Article 43 provides: "The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country."

in the Islands. It was a lawful exercise of an occupying belligerent's powers.

(b) The delivery of Philippine pesos by PNB to the Bank of Taiwan in 1945 was a valid taking. PNB has not established that it has any beneficial ownership interest in the monies delivered by it to the Bank of Taiwan, nor does the record establish that the money was not the property of the Japanese and that its surrender to the Bank of Taiwan was not an authorized transfer by the Japanese owner of the property to another depository. PNB contends, however, that the taking by the Bank of Taiwan of its Philippine pesos was unlawful under international law and that "title" to those funds, therefore, remained in PNB.

Since the evidence shows that the Philippine pesos were taken for the purposes of purchasing foodstuffs and supplies for the Japanese army and that Philippine currency as distinguished from Japanese military currency had assumed a status as a commodity at that time, its requisition by the Japanese was in conformity with the Hague Convention, and particularly Article 52 thereof. The provisions of Article 52 were scrupulously adhered to. The requisition was made on the authority of the local military commander, and a receipt therefor was given.

The taking by the Bank of Taiwan might also be supported under Article 53, although the trial court did not sustain the respondents' position in that respect, namely, that PNB was a government agency. The record establishes that more than 99% of the

stock of PNB was owned by the Philippine Government. PNB was clearly regarded as a state agency by the Japanese puppet government, as is reflected by Executive Orders 135 and 136 (J.A. 220–231).

CONCLUSION

The petitions for certiorari should be denied.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.
DALLAS S. TOWNSEND,
Special Assistant to the Attorney General.
IRVING JAFFE,
Attorney.

DECEMBER 1960.

U.S. GOVERNMENT PRINTING OFFICE 1960